

Remarks

Applicants respectfully request reconsideration of this application in view of the following remarks.

Claims 1, 2 and 4-8 are pending. Claims 3 and 9-20 have been withdrawn as non-elected species and invention in view of a prior restriction requirement.

Claim 1 relates to a composition for conditioning the hair, said composition comprising: (i) a first hair conditioning agent, wherein said first hair conditioning agent is selected from the group consisting of avocado oil, apricot kernel oil, olive oil, sesame oil, coconut oil and PEG-7 olivate and penetrates into the core of the hair; (ii) a second hair conditioning agent, wherein said second hair conditioning agent is meadowfoam seed oil and penetrates into the cortex of the hair but does not substantially penetrate into the core of the hair; and (iii) a third hair conditioning agent, wherein said third hair conditioning agent is selected from the group consisting of PEG-8/SMDI copolymer, palmitoyl myristyl serinate, jojoba oil, almond oil, almond proteins, and sunflower oil and does not substantially penetrate into the cortex of the hair.

Claims 1, 2 and 4-8 stand rejected under 35 U.S.C §103(a) as obvious over the combination of US Patent Nos. 4,999,187 to Vernon and 6,669,933 to Duffer et al. The Examiner argues Vernon discloses a hair treatment composition containing olive oil and almond oil, and that oils are known conditioning agents since they provide emolliency to the hair/scalp. The Examiner acknowledges that Vernon does not teach or suggest the use of meadowfoam seed oil or the use of surfactants according to claims 7 and 8, but argues this is taught by Duffer et al., which disclose a hair color composition that may optionally contain an oily conditioning agent such as meadowfoam seed oil (column 9, line 41) and a surfactant (column 11, line 3). The Examiner argues it would have been obvious to add meadowfoam seed oil to the oils used by Vernon. The Examiner argues the two references belong to the same field of endeavor, hair care, and this would prompt one skilled in the hair care art to modify the compositions with known conditioners since the resulting variations would be predictable.

Applicants disagree. As stated previously, the claimed invention is a hair conditioner. Vernon relates to a hair treatment composition that may condition in

addition to treating dandruff and growing hair. Duffer et al. relate to a hair coloring composition that optionally contains conditioners and surfactants. First, applicants maintain that Vernon and Duffer again represent different product categories -- from each other and from the claimed invention. Second, applicants do not dispute that oils such as those used in the claimed invention are known, or found in other formulations, and this is all that is taught by the cited references. Rather, applicants have discovered something more -- that different hair conditioning agents chemically affect the hair differently, and that by combining three hair conditioning agents with three different functions, a new and superior hair conditioning composition results. This is explicit in the claims, which require the combination of a first conditioning agent that penetrates into the core of the hair, a second conditioning agent that penetrates into the cortex of the hair but does not substantially penetrate into the core of the hair, and a third conditioning agent that does not substantially penetrate into the cortex of the hair. The identification of the chemical behavior and deliberate combination of different conditioning agents based on such chemical behavior is not found in the prior art.

The Examiner maintains that the properties of the various oils are inherent. This is true. However, what is not shown or suggested in the art is the combination of the three oils. Only applicants have sought to combine the three types of oils in one product.

Applicants therefore submit that the rejection under Section 103(a) should be withdrawn.

Reconsideration of the application is earnestly requested.

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